

**Letter of Findings Number: 10-0378P
Corporate Income Tax-Penalty
For the Year 2007**

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a corporation doing business in Indiana. During an audit for the tax years 1997 through 2000, the Indiana Department of Revenue ("Department") recomputed Taxpayer's net operating loss carryforward amount for the 2000 tax year.

The Department later conducted another audit of Taxpayer. During the second audit, the Department determined that Taxpayer used its computation of the net operating loss carryforward rather than the net operating loss carryforward as adjusted by the Department. After application of the corrected net operating loss carryforward, the Department determined that Taxpayer underpaid its 2007 Indiana corporate income tax liability. The Department also imposed a negligence penalty on the assessment. Taxpayer protested the penalty assessment.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to remit the full amount of corporate income tax on or before the due date for payment.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer asserts that the additional tax for 2007 was the result of using an erroneous net operating loss carryforward schedule. However, Taxpayer had notice of the adjustments to its net operating losses prior to 2007 and yet continued to use the incorrect schedule. Even though the error was unintentional, Taxpayer has not established reasonable cause for its use of the incorrect net operating loss schedule and resulting tax underpayment. Therefore, because Taxpayer has not demonstrated reasonable cause for its tax underpayment, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.

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